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A private matter?

Private tenants: the forgotten victims of the repossessions crisis

"…it is important that measures be taken to protect this group of individuals who have paid their rent but have little control over a decision which has a significant impact upon their lives."[1]

Communities and Local Government Select Committee, 2009

The Council of Mortgage Lenders (CML) predicts that 75,000 properties will be repossessed this year. The Government has developed a range of mechanisms to help owner-occupiers stay in their homes but private tenants also risk losing their homes when their landlords are repossessed. Tenants facing this situation currently have little or no protection and not even the right to a standard notice period to find alternative accommodation. With 14 per cent of households in England now living in the private rented sector[2] and many thousands of mortgages held by landlords in arrears, this problem is likely to get worse and cannot be ignored.

Shelter, Citizens Advice, Crisis and the Chartered Institute of Housing are calling for changes to give tenants basic protection from eviction when their landlord has defaulted on the mortgage and the lender is seeking possession.

1 House of Commons Communities and Local Government Committee (2009) *Housing and the Credit Crunch*. 3rd Report of Session 2008-2009 (London)

2 Survey of English Housing Preliminary Report 2007/08, Communities and Local Government, 2009

What happens to tenants when their landlords face repossession?

Assured shorthold tenants have few enough rights as it is. Landlords can evict tenants without reason and are only required to give two months notice (outside a fixed term) and obtain a possession order through the courts. That two month notice period is crucial in providing a breathing space for tenants to start looking for an alternative home. Yet where a lender takes possession action against a defaulting borrower/landlord, the tenant can lose even these basic rights.

The only warning the tenant may get of the fact that the property is being repossessed is a notice which the lender must send addressed to `The Occupier' before the hearing and a Notice of Eviction shortly before the court bailiff comes to carry out the eviction.

A tenant will often be unaware that their landlord has fallen into arrears with mortgage payments and that their home is at risk. Due to data protection laws, mortgage lenders and their solicitors cannot communicate directly with tenants to tell them what is going on, because their relationship is with the landlord, not the tenant. The landlord is unlikely to tell the tenant that they are facing repossession for fear that the tenant will then withhold the rent or leave. Notices to 'The Occupier' often go astray or remain unopened, buried in piles of junk mail.

Case study 1: A Surrey CAB reported the case of a lone parent with two children who had been renting a property for 10 months. She came back from a holiday to find that the locks had been changed and there was a notice announcing that a possession order had been made. After a two hour wait, a representative from the lenders turned up and let her in under supervision for ten minutes to collect a few necessary possessions, including her son's GCSE work. The client and her children had been left very upset. She had to make repeated visits to the lender asking for access and for information about when she would be allowed to collect the rest of her possessions. They proved unhelpful and told her they were 'unable to contact the necessary person'.

Sometimes, the first the tenant may know is when the bailiffs turn up on their doorstep or they are given an eviction date literally days before they have to leave the property. Even when tenants are aware of the situation and attend a possession hearing, the court has no discretion to take their circumstances into account and allow them a reasonable amount of time to make alternative arrangements. Under these circumstances, tenants are denied the rights they would normally be afforded when a landlord chooses to end a tenancy.

Case study 2: A single male pensioner called into a Shelter drop-in session. He had had no rent arrears during the four years of his assured shorthold tenancy. The man was aware that the landlord had mortgage arrears problems and had recently received a letter from the lender's solicitor informing him of a possession hearing in approximately two weeks time. He could not find any alternative private rented properties and was considering a homelessness application.

This is manifestly unjust where tenants have played by the rules and paid their rent regularly. It can also be a deeply distressing and worrying experience for the people involved as, with no time to find somewhere

else to live, people can be left facing homelessness.

As well as losing their home, tenants can also lose out financially when their landlord is repossessed. Some lose their deposit, others the rent they have paid in advance. This of course can make it even more difficult for the household to secure alternative accommodation.

Case study 3: A CAB client living in Staffordshire and suffering from cancer first heard of his landlady's repossession when he received a Notice of Eviction from the Bailiffs. He was assured by his landlady not to worry as it was all being sorted out. This was untrue as the bailiffs then came in, evicted the client and changed the locks before he could remove his possessions and essential medication.

We are calling on the Government to take urgent action to protect the three million households who rent privately and to ensure that private tenants do not become the next victims of the repossession crisis. Government must ensure that private tenants caught up in the landlord possession process are given real legal protection by allowing the courts the discretion to take into account the tenants' situation when a property is repossessed.

How many people are being affected?

Whilst exact figures on the number of tenants being affected are not available, advice agencies are already seeing an increase in people seeking advice on this issue, with thousands of people having sought assistance over the past year. Of course, this is likely to be only the tip of the iceberg and does not include the many people who do not know where to seek help or do not have enough time to do so.

In the second half of 2008, the number of buy-to-let properties being repossessed was double that of the same period in 2007 (1,100 to 2,300).[3] At the end of December 2008 there were 26,800 buy-to-let mortgages in arrears which is an increase of more than 100 per cent from the same period in the previous year (12,100). On the basis of CML statistics, we estimate that there may be around 8,000 buy to let repossessions in 2009, many of which could result in tenant evictions.

Case study 4: One Shelter Housing Aid Centre gave advice to a couple with two teenage children. They had bought their house through right-to-buy, but later found that they could not keep up with mortgage repayments when the interest rates rose. They subsequently sold the house to a sale and rent back operator, and had been letting the property from this SRB landlord for about two years. The couple had not seen their landlord in over a year and had no way of contacting him. They were totally unaware of the possession proceedings until they opened a letter informing them that the hearing date had been set for two weeks time.

However, there is no way of knowing how many tenants live in properties bought with residential mortgages where the landlord has not sought lender consent to rent the property out. These sorts of tenancies are likely to increase as struggling homeowners are unable to move and/or rent out space to cover costs. If the landlord does not have the lender's permission to rent out the property, the tenant is likely to have fewer rights and is even more likely to face homelessness.

3 CML (2009) Table AP5

What is the scale of the problem?

Interim findings from Crisis' survey of advisers helping people access the private rented sector paint a grim picture. Over 60 per cent of the 117 responses received so far report having been approached by someone whose landlord has been repossessed, with 80 per cent of these saying they have seen an increase in people in this situation.

When asked, 55 per cent of respondents reported that the tenants had been given four weeks notice or less to leave the property, with 10 per cent saying the tenant was given no notice at all, and nearly a quarter of respondents said that the most common outcome was that the tenant became homeless.[4]

So are private tenants getting any help?

The Government is changing the Civil Procedure Rules (CPR) so that a notice of a possession hearing is sent to the property at an earlier stage. From April 2009, the lender must send the notice within five days of receiving notification of the date of the court hearing, rather than at least 14 days before the hearing. Whilst we welcome this change it does not go far enough. The new rules are inadequate because:

- Tenants often don't receive this notice. The notice is addressed to The Occupier and there is nothing to distinguish it from the routine junk mail that most households receive.
- In practice, even if a tenant receives and opens the notice they will only have three to seven weeks notice of a possession hearing.
- The notice is only a warning that the landlord has been issued with proceedings. It doesn't give the tenants any status in the proceedings or the right to be admitted to the hearing or even the right to receive a copy of the order. The judge has no discretion to take account of the tenant's situation, such as by delaying the repossession so the tenant has time to find alternative accommodation
- At worst, tenants are likely to get only a few days notice of eviction once the court has granted possession.
- Unless additional tenant protection is built in, the new rules could cause some tenants to panic and leave the property immediately, thereby pre-empting the court's decision and exacerbating the landlord's predicament by removing the rental income.
- Furthermore, changes to the CPR offer no protection to tenants in situations where formal repossession proceedings have been bypassed, such as when the landlord hands the keys back to the lender.

The Council of Mortgage Lenders is developing a code of good practice for lenders in situations where properties facing repossession have sitting tenants. We welcome this move but it does not go far enough. As a voluntary code it is unenforceable and not all lenders will adhere to it. Ultimately, tenants will still be left with no legal protection.

4 Interim findings from *One year on: your experience of the implementation of LHA*, Crisis (2009)

The Communities and Local Government Committee has also called for Government guidance stipulating that lenders should make arrangements for the professional management of repossessed properties for a minimum of six months after repossession where there is a sitting tenant.[5]

What we are calling for:

The Government must take urgent action to avert this potential crisis. Tenants need legal protection to ensure that they at least have a reasonable time to find somewhere else to live.

- We are calling for amendments to the Administration of Justice Acts 1970 and 1973 and the Consumer Credit Act 1974 to give courts the discretion, where an outright possession order is granted and there is a tenant in occupation, to defer possession for a limited period of time, taking into account the circumstances of the tenants. The court would then have flexibility in making this decision so that it could take into account the interests of any children or vulnerable people in the household and the household's economic circumstances. The lender could appoint a receiver of rent during this time.
- More needs to be done to make tenants aware of possession proceedings and their rights by ensuring a notice is sent to the property by the courts as well as the notice from the lender. Both should include information for tenants about their rights and where they can go to get further advice. To increase the chances of a tenant opening the notice, envelopes should be marked with a message such as 'your home is at risk'.

5 House of Commons Communities and Local Government Committee (2009) *Housing and the Credit Crunch*. 3rd Report of Session 2008-2009 (London)

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